

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

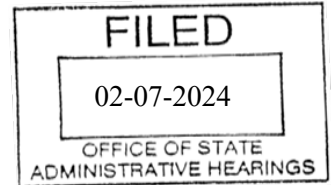
██████████ **BY AND THROUGH** ██████████  
Petitioner,

v.

**EFFINGHAM COUNTY SCHOOL  
DISTRICT,**  
Respondent.

Docket No.: ██████████  
██████████ OSAH-DOE-SE-51-Fry

Agency Reference No.: ██████████



**ORDER GRANTING RESPONDENT'S  
MOTION FOR INVOLUNTARY DISMISSAL**

**I. INTRODUCTION**

The Petitioners filed a due process hearing request (DPHR) alleging that the Respondent (also the “District”) had failed to provide ██████████ with a Free Appropriate Public Education (“FAPE”) under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). The hearing was set for January 4, 2024. The case was filed on September 11, 2023. On September 19, 2023, Respondent filed a Response to the DPHR and a Notice of Insufficiency. The following day, Petitioner requested an extension of time to respond and to obtain counsel. The Court granted a thirty (30) day extension of the resolution period and on October 2, 2023 issued an order finding the DPHR insufficient and giving Petitioner until November 2, 2023 to file an amended DPHR. Petitioner obtained counsel and on November 2, 2023, counsel, on behalf of Petitioner, filed an Amended DPHR. On November 20, 2023, the Court set the hearing date for January 4, 2024. At the parties’ request, the Court held a prehearing conference on November 30, 2023 with counsel for both parties. On December 19, 2023, counsel for Petitioner filed a Motion to Withdraw citing Petitioner’s lack of cooperation. On December 22, 2023, Petitioner filed a Motion for Continuance which Respondent opposed. The Court granted the Motion to Withdraw and denied the Motion to

continue. The Court had previously granted Petitioner a substantial continuance to obtain counsel and stated that there would be no additional continuances granted. On January 4, 2024, the Petitioners appeared *pro se*, and Reagan Sauls, Esq., represented the District.

Following the presentation of the Petitioners' evidence on January 4, 2024, the Respondent orally made a Motion for Involuntary Dismissal. The Court adjourned for a lunch break and asked the Petitioner to be prepared to respond when the hearing reconvened. During the break, the Court reviewed Petitioner's exhibits and the Court's notes from the hearing and considered the admitted evidence in view of the allegations set forth in the Amended DPHR. After hearing Petitioner's response, the Court orally reviewed the claims and allegations in the Amended DPHR against the evidence presented by Petitioners, concluded that Petitioners had failed to carry the burden of proof and that Respondent's motion was due to be granted. The Court stated it would issue a written decision. After further review of Respondent's motion and the evidence presented at the hearing, the Court hereby **GRANTS** the Respondent's Motion for Involuntary Dismissal.

## **II. INVOLUNTARY DISMISSAL**

After a party with the burden of proof has completed the presentation of its evidence, any other party may move for dismissal on the ground that the party that presented its evidence has failed to carry its burden. Ga. Comp. R. & Regs. 616-1-2-.35. The Georgia Civil Practices Act ("CPA") also provides for involuntary dismissal. See O.C.G.A. § 9-11-41(b). Under the case law interpreting Section 41(b) of the CPA, a court presiding in a non-jury trial is not required to construe the evidence most favorably to the Plaintiff. Alexander v. Watson, 271 Ga. App. 816, 817 (2005) (trial court is not required to construe the evidence in the plaintiff's favor because trial court acting as factfinder); see also Ivey v. Ivey, 266 Ga. 143, 144 (1996) ("Since the [trial] court determines the facts as well as the law, it necessarily follows that the motion may be sustained

even though plaintiff may have established a prima facie case.”) (citation omitted); cf. K.A. v. Fulton Cty. Sch. Dist., 741 F.3d 1195, 1209, (11th Cir. 2013) (summary judgment appropriate in IDEA cases even when facts are in dispute).

As the parties seeking relief, the Petitioners carry the burden of proof in this matter. Schaffer ex rel Schaffer v. Weast, 546 U.S. 49, 57-58, 62 (2005); accord Devine v. Indian River Sch. Bd., 249 F.3d 1289, 1291 (11th Cir. 2001); Ga. Comp. R. & Regs. 160-4-7-.12(3)(k)(1). Parents in Georgia challenging an IEP and the denial of FAPE bear the burden of presenting a complaint, requesting a due process hearing, and proving their case. K.A., 741 F.3d at 1208.<sup>1</sup>

### III. ANALYSIS

The Petitioner █████<sup>2</sup> was enrolled as a kindergarten student at ██████████ ██████████ for the 2022-23 academic year and at ██████████ Elementary School (██████████ as a pre-kindergarten student for the 2021-22 academic year. He is now homeschooled. He has been diagnosed with significant developmental delay (“SDD”) and with speech and language impairment (“SLI”) and is eligible for services under IDEA. ██████████ is ██████████’s mother.

On November 2, 2023, the Petitioners filed an amended due process hearing request (“Amended Complaint”). Petitioner alleged that ██████████ did not receive Free and Appropriate Public Education (“FAPE”) because,

██████████ and ██████████ failed to properly evaluate ██████████ by conducting a thorough and timely Functional Behavioral Analysis (FBA) in 2021, failing to implement an appropriate Behavior Intervention Plan (BIP) throughout the 2021-22 and 2022-23 school years, and failing to implement the accommodations as described in his Individualized Education Plan (IEP) throughout the 2021-22 and 2022-23 school years.

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<sup>1</sup> Despite the Petitioners’ claims of prejudice throughout the proceeding, most, if not all, of the exhibits tendered into evidence by the Petitioners were admitted.

<sup>2</sup> To protect their privacy, the Petitioners and minor children are referred to herein only by their initials.

Amended Complaint, p. 1.

The Amended Complaint further alleges that,

The evaluation conducted by [REDACTED] in November 2021 was incomplete, lacking any observations of [REDACTED] and was thus unable to accurately identify the function and precursors for his behaviors. This led to the creation of an ineffective BIP that was not designed to meet the individual social-emotional and behavioral needs of [REDACTED]. In addition, the BIP lacked specificity in identifying replacement behaviors.

Amended Complaint, p. 2.

During her opening statement [REDACTED]'s mother alleged several additional failures on the part of the District that led to a denial of FAPE, which were not expressly stated in the same terms as set forth in the Amended Complaint. The Court has included this for clarification and completeness. These allegations include:

- Respondent committed procedural and substantive violations
- Respondent did not offer behavioral services
- Respondent failed to adequately train staff and aides to work with [REDACTED]
- Respondent failed to place [REDACTED] in the least restrictive environment
- Respondent failed to address all his needs
- Respondent failed to discipline [REDACTED] according to his needs

Petitioners are seeking to recover fees incurred for private therapy and for alternate education services during the 2022-2023 school year. Petitioners also are seeking compensatory services to make up for the educational time lost during the 2021-2022 school year and 2022-23 school year. Finally, Petitioners are seeking attorney's fees.

#### **A. FINDINGS OF FACT**

Petitioners' Presentation of Evidence:

1. [REDACTED]'s father, Mr. [REDACTED] testified that [REDACTED] is a perfectionist and that he wants to do well, but that his special needs were not addressed and that he was not served as required by his IEP. Mr. [REDACTED] testified that during his pre-kindergarten school year [REDACTED]'s teacher, Ms.

Whitaker, was great but that his other teachers were not. He also stated that [REDACTED]'s special needs teacher in kindergarten was great. He testified that [REDACTED] did better in a small classroom. He stated that [REDACTED] was not offered any behavioral services, so they outsourced those services and paid for them. He complained that during IEP meetings, he and [REDACTED]'s mother would interject that issues were not being addressed. He testified that he would take time off work to go observe [REDACTED] in the classroom. On cross examination, he acknowledged that when he visited the school, he did not see [REDACTED] exhibit any of the behaviors that were raised in the referrals.

2. Ms. [REDACTED] testified that [REDACTED] would come home and tell one story and the general education teacher would say it did not happen that way. She testified that what the teacher told her was inconsistent in that the teacher would say that he was verbally abusive but at the same time would say she could not understand what he was saying.<sup>3</sup> Petitioner testified that the Functional Behavior Assessment (FBA) stated that [REDACTED] had daily tantrums. She argued that this was inconsistent with the daily activity sheets, some of which (were admitted as Petitioner Exhibits and discussed below) showed that on the subject day, [REDACTED] did not have a tantrum. Since Petitioner did not tender the FBA for admission, Petitioner's statement as to what the FBA says is hearsay. Additionally, assuming the statement is accurate, without the full context, it would be unreasonable to construe the word "daily" as meaning "every single day without fail." Again, therefore, Petitioner's argument and the lack of evidence to support it do not establish that there is an inconsistency between the FBA and the daily activity sheets.

3. Petitioner sent several emails about her concern that [REDACTED] was being bullied. On at least one occasion, [REDACTED] came home with wood chips in his hair. *See* P-6 below. She stated that

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<sup>3</sup> For the record, if someone who does not understand Russian is being verbally abused in Russian, that person likely knows it even if they do not understand the words. Petitioner's argument does not refute or rebut the teacher's observation that the behavior was verbally abusive.

she was not informed how the investigation of bullying was conducted or what the results were. She testified that since he was being bullied into responding, he was being punished for the response. Petitioner also complained that [REDACTED]'s behaviors cited by the school were not consistent with his behaviors. The evidence presented by the Petitioner did not show that this was the case. Petitioner identified one instance on cross examination where she went to [REDACTED] Elementary School for an Easter egg hunt. When she arrived, he calmed down, so there was no tantrum for the teachers to handle. Other than this incident, it appears that Petitioner did not observe how the teachers handled any of [REDACTED]'s outbursts. Petitioner expressed concern that letting [REDACTED] have a tantrum when he not engaging with another student and acting alone, nevertheless spins him up such that he remains spun up and more likely to have an outburst that involve another child for which he would be punished. She testified that his actions and inactions were the result of his IEP not being followed. She stated that the general education teacher did not follow his IEP or his BIP. She also stated that there was nothing in his IEP about allowing [REDACTED] ten minutes for a tantrum. Petitioner did not tender any of [REDACTED]'s IEPs or BIPs for admission and as a result did not identify which specific provisions of [REDACTED]'s IEP or BIP were not followed. Petitioner also did not provide any admissible evidence that [REDACTED] was being allowed only ten minutes for a tantrum.

4. Petitioner also complained that there were incidents where he was sent to the counselor, but she was not informed even though she stated it was in the daily activity sheets. She testified that the school did not address all [REDACTED]'s needs, that the school did not satisfy the need to address his behavior issues, and that they had to get outside behavioral services help. Petitioner offered no evidence from any of the counselors that they hired that the services were necessary, when they occurred or what they cost. She stated that [REDACTED] went from being happy at school to hating school. Based upon statements made by [REDACTED] to his mother, which were objected to as

hearsay, [REDACTED] accused his teachers of beating him up. Petitioner also complained that no one told her that [REDACTED] had been hit when he came home with scratches on one occasion and that he had been bitten on another occasion.

5. On cross-examination, Respondent had Petitioner read the following entries from R-51, which is a contact log between school officials one or the other or both of [REDACTED] s parents. Respondent had Petitioner read the following entries: 9/9/21, 12/1/21, 12/8/21, 3/24/22, 4/20/22, 4/26/22. The contact log was not tendered for admission and was not admitted. Since all of the entries were made by third person, Petitioner ultimately questioned why she had to read these since they had the same problem Respondent had objected to about [REDACTED] s statements. The Court considers that to be a hearsay objection. Upon review and consideration, the objection is sustained. Respondent also had Petitioner read various passages from R-14 (IEP (review speech progress) 10/14/21), R-17 (IEP Review 11/29/21), and R-20 (IEP Amendment 4/07/22). These IEPs were not tendered for admission by either party and were not admitted into evidence. Petitioner ostensibly made the same hearsay objection, which is sustained.

On redirect, Petitioner offered the following documents for admission into evidence. Many of these documents refer back to incidents Petitioner described in her testimony. Petitioner’s testimony does not align with Petitioner's Exhibits because she testified first and then came back to introduce the documents.

Exhibit #	Date	Description	Objection
P-1	12/10/21	Daily Behavior Chart: All items marked were marked in green for a full smile	None, admitted
P-2	10/1/21	Daily Behavior Chart: All items except Circle Time and Group Activity were full smiles. Circle Time was a half smile because [REDACTED] would not sit and Group Activity was a half smile because [REDACTED] hit a peer	None, admitted
P-3	10/13/21	Email Exchange B/T Petitioner and Amanda Castillo re speech sessions which were	None, admitted

		conducted, his current schedule for speech sessions and an upcoming progress meeting.	
P-4	11/30/21	Email request from Petitioner to K. Ratner with school re requesting a meeting.	None, admitted
P-5	9/9/21	Email from Petitioner to Jan Davis, Melissa Long, Amanda Castillo and M. Glenn re [REDACTED] with photo attached re incidents at school where [REDACTED] was in a scuffle with another boy. She relayed that she had been told that [REDACTED] was the aggressor and other students were not hitting back. She questioned the scratches on [REDACTED]'s neck in the photo and wanted to know if the actions of the other child had been observed, whether he had been checked for bruises, whether he had been seen by the nurse and whether anyone had asked [REDACTED] what happened. Petitioner personally took the attached photo.	Hearsay regarding statements by [REDACTED] Photo [REDACTED] was admitted.
P-6	11/4/21	Email from Petitioner to Margaret Glenn re [REDACTED] coming home with wood chips in his hair and a scratch over his eye. Petitioner questioned whether Ms. Glenn was aware of this and stated that they have instructed [REDACTED] to inform the teacher when other kids hit him and that they told him not to let other children hit him.	Hearsay as to the statements by [REDACTED] Admitted subject to objection.
P-7	12/10/21	Email from Petitioner to Margaret Glenn that [REDACTED] came home with a scratch and bruising under his eye, a red welt on his cheek and a bruise on his forehead. [REDACTED] reported certain information which was objected to on hearsay grounds. Petitioner stated that she did not receive a call and wanted clarification because his activity sheet states his actions but does not state what happened to him. Petitioner asked if he was checked by a nurse or if anyone noticed the bruises on his forehead, face, and cheek. She wanted clarification on what happened.	Hearsay as to the statements by [REDACTED] Admitted subject to objection. Photos admitted.
P-8	Various	Series of Weekly Information Charts with starting dates for the days listed of 1/10/22, 12/1/21, 1/5/22, 12/9/21, 4/25/22, 5/6, 22, and 4/18, 22. The teacher's notes show a predominance of happy faces on the days listed. There is an incident referenced by Petitioner in the notes for 1/10/22 but nothing in the	Admitted. Respondent objected based on hearsay, which on further review and consideration is overruled.



		teacher's note. There is an incident referenced on 12/6/21 where he hit a peer, but the teacher's comment was he did fine. On the 12/9-12/10/21 Parent's notes section, Petitioner raised the same concerns that she did to Ms. Glenn in P-7. The teacher responded that she was did not know about the incident, that she would follow up with Ms. Glenn and that ■■■ is doing great in her class.	
P-9	9/17/21	Daily Behavior Chart: green full smile faces marked on Morning Arrival/Breakfast, Recess and Bathroom Break/Snack	Admitted
P-10	9/20/21	Daily Behavior Chart: green full smile faces marked on Group Activity with note that he given a choice and did a solo activity, Bathroom Break/Snack, Rest Time, and Dismissal. Green half smile for Lunch/Bathroom. No notes provided for half smile.	Admitted
P-11	3/3/22	Email exchange between Petitioner and Ms. Glenn re report of an incident listed on ■■■'s daily report and being sent to the counselor. Petitioner sent inquiry at 3:11 PM on 3/3 and Ms. Glenn responded at 3:30 PM. The email string ends with Petitioner's response at 4:37 PM the same day. Although Respondent objected on hearsay grounds to the extent any statement by Ms. Glenn was offered for the truth of the matter asserted, the email exchange show that Ms. Glenn responded promptly.	Hearsay, admitted subject to objection
P-12	5/23/22	Email from Petitioner to Ms. Glenn reporting what ■■■ told his mother about an incident that day.	Hearsay, admitted subject to objection
P-13	Various	Remind App (used to communicate between parents and school officials) Message String between Petitioner and Ms. Glenn. The inclusive dates are 8/24/21 to 10/10/23. The first message in the string is dated 8/27/21 and the last is dated 5/13/2022	Admitted. Respondent objected based on hearsay, which on further review and consideration is overruled.
P-14	4/27/22	Email exchange between Petitioner and Ms. Glenn re a referral incident of biting. Objected to on hearsay grounds as to what occurred. Petitioner did not observe a bruise because it	Hearsay, admitted subject to objection

		possibly went away. She wanted to know what happened since it was not on his daily activity sheet. Ms. Glenn responded Petitioner's inquiry was the first she heard of it.	
P-15	5/27/22	Email exchange between Petitioner and Ms. Ashley Hunter re availability of a new IEP via the Parent Portal. The Petitioner argued that the date of this exchange does not line up with the information in the IEP concerning the date the investigation of the bullying incident was complete. According to Petitioner, the IEP minutes from the meeting on the same day the investigation was supposedly complete are silent about completion of the investigation. The IEP was not tendered by Petitioner for admission, so the minutes from the IEP meeting are in evidence.	Admitted (the email exchange is admitted; the IEP was not admitted)
P-16	9/2/22	Email exchange between Petitioner and Sara Huntley, Assistant Principal re referral regarding an incident that occurred on 8/30/22. <sup>4</sup> Petitioner asked that the referral be modified as it was not consistent with what █████ told her happened. Respondent objected to █████'s statements as hearsay. Ms. Huntly simply responded that what she heard from █████ was different. She nevertheless attached an updated referral.	Hearsay, admitted subject to objection; referral not subject for IDEA
P-17	9/7-9/22	Email exchange between Petitioner and Ms. Huntley re a pushing incident and an associated referral. Petitioner took exception to █████ being described as angry and violent. In particular she took exception to the use of the word violent being used to describe a five year old's behavior. She requested that the referral language be modified and noted that their requests to modify referral language in the past has been ignored and dismissed.	Hearsay, admitted subject to objection; referral not subject for IDEA
P-18	4/13-14/23	Email exchange between Petitioner and Ms. Huntley re restraint issue between █████ and STEAM teacher. Petitioner questioned what occurred based on what █████ told her. Ms. Huntley stated that she included what she	Hearsay, admitted subject to objection; referral not subject for IDEA

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<sup>4</sup> Referrals are not part of IDEA.

		observed and heard during her inquiry were incorporated into the referral.	
P-19	3/30-4/3/23	Email exchanges between Petitioner and Dana Wright re spitting incident and issue of consequences for the other student involved. The email exchange branches to a separate chain between Petitioner and Timothy Hood re a formal complaint that Petitioner filed with the DOE regarding incidents that have occurred that have not been addressed.	Hearsay, admitted subject to objection
P-20	5/9/23	Email from Courtney Golden to Petitioner forwarding referral re incident that occurred on 5/9/23. Petitioner noted that [REDACTED] had never been sent to the nurse when he had a tantrum. Ms. Golden attached a referral regarding the incident to the email.	Hearsay, admitted subject to objection; referral not subject for IDEA
P-21	9/2/22	Email that picks up from P-16 where Ms. Huntley sent a modified referral. Petitioner acknowledged receipt and stated she would review. The rest of the email concerned teasing on the bus and Petitioner’s instructions to her oldest child to sit with his younger siblings. The bus driver moved the older brother and not the child causing the problem.	Hearsay, admitted subject to objection
P-22	Various	Remind App Message String between Petitioner and Kaity White (Special Ed Teacher), inclusive dates between 8/2/22 and 10/10/23. First date in string 8/4/2022. Last date in string 5/24/2023. Petitioner called attention during her testimony to a spitting incident on page 24. The date of the message exchange was 3/31/23. See P-19.	Hearsay, admitted subject to objection
P-23	Various	Remind App Message String between Petitioner and Ms. Christine (General Ed. Teacher), inclusive dates between 8/10/22 and 10/10/23. First date in string 8/11/2022. Last date in string 5/19/2023.	Hearsay, admitted subject to objection

On recross examination, in rebuttal to Petitioner’s testimony about the lack of a reference in the IEP to the bullying investigation (*see* P-15) above, Respondent had Petitioner read from R-24, [REDACTED]’s IEP Amendment dated 5/19/22. Respondent had Petitioner read a passage from the Parental Concerns section which reads: “Team discussed parent concerns specific to bullying. Dr.

Kessler explained her response and investigation to address bullying report. She will continue to interview other students.” Petitioner did not object to this passage.

## **B. CONCLUSIONS OF LAW**

Similar to the manner in which the Court addressed Petitioner's claim in the Amended DPHR orally, the Court has set forth each allegation in the Amended DPHR and addressed them individually below.

*As noted above, Petitioner alleged that █████ did not receive Free and Appropriate Public Education (“FAPE”) because,*

*█████ and █████ failed to properly evaluate █████ by conducting a thorough and timely Functional Behavioral Analysis (FBA) in 2021, failing to implement an appropriate Behavior Intervention Plan (BIP) throughout the 2021-22 and 2022-23 school years, and failing to implement the accommodations as described in his Individualized Education Plan (IEP) throughout the 2021-22 and 2022-23 school years.*

*Amended Complaint, p. 1.*

- Petitioner did not introduce the FBA, the IEPs or the BIPs into evidence. Additionally, there was no testimony or evidence presented concerning the appropriate time to conduct an FBA or that the content of the IEPs and BIPs were inappropriate and why.

*The Amended Complaint further alleges that,*

*The evaluation conducted by █████ in November 2021 was incomplete, lacking any observations of █████ and was thus unable to accurately identify the function and precursors for his behaviors. This led to the creation of an ineffective BIP that was not designed to meet the individual social-emotional and behavioral needs of █████ In addition, the BIP lacked specificity in identifying replacement behaviors.*

*Amended Complaint, p. 2.*

- The referenced evaluation was not tendered or admitted into evidence and there is no testimony or evidence that the November 2021 evaluation was incomplete. Further, the BIP that was

allegedly created from the November 2021 evaluation was not tendered or admitted into evidence, and there is no testimony from a knowledgeable witness or evidence that the BIP was not designed to meet [REDACTED]'s needs. Similarly, there is no testimony from a knowledgeable witness or evidence that the BIP lacked specificity in identifying replacement behaviors.

The remaining allegations in the Amended Complaint relating to the 2021-22 school are as follows:

- *The situation was further exacerbated by the failure of [REDACTED] to implement the interventions listed in the BIP consistently.*
  - There is no evidence of the interventions listed in the BIP and no testimony from a knowledgeable witness or other evidence to show they were not implemented consistently.
- *[REDACTED]'s general education teacher, Margaret Glenn, failed to implement basic accommodations from [REDACTED]'s IEP, such as preferential seating, and to adhere to the behavior interventions listed in the BIP to prevent [REDACTED]'s behaviors from impeding his education.*
  - Ms. Glenn was not called by Petitioner as a witness to testify as to her implementations of basic accommodations for [REDACTED]. There is no testimony from a knowledgeable witness or other evidence to show that accommodations were not implemented consistently.
- *Margaret Glenn also failed to maintain and provide accurate and appropriate daily behavior reports, undermining the ability for the reports to serve their intended purpose in managing [REDACTED]'s behavior and monitoring progress towards the behavioral objectives listed in his IEP.*
  - Ms. Glenn was not called by Petitioner as a witness to testify as to her provision of daily behavior reports for [REDACTED]. There is no testimony from a knowledgeable witness or other evidence to show that Ms. Glenn failed to provide these reports.

Petitioner did not provide any testimony concerning how the reports were not accurate or were inappropriate.

- *Margaret Glenn frequently failed to intervene when others were "bullying" or antagonizing [REDACTED]*
  - Ms. Glenn was not called by Petitioner as a witness to testify as to the instances of bullying of [REDACTED]. There is no testimony from a knowledgeable witness or other evidence to show that [REDACTED] was bullied or that Ms. Glenn “frequently failed to intervene.”
- *The failure to respond and to follow [REDACTED]'s BIP in such instances directly resulted in behavior incidents and referrals for [REDACTED] that ultimately reduced his instructional time.*
  - There is no testimony from a knowledgeable witness or other evidence to show that Respondent failed to follow the BIP or that his instructional time was reduced.
- *Amanda Castillo, [REDACTED]'s speech teacher, also failed to adhere to the behavior interventions and instead reacted to [REDACTED] in ways that escalated behaviors and effectively denied [REDACTED] access to the services listed in his IEP.*
  - Ms. Castillo was not called as a witness. There is no testimony from a knowledgeable witness or other evidence to show that Ms. Castillo failed to adhere to behavior interventions or that she reacted in a way that escalated [REDACTED]'s behaviors.
- *There were also incidents, including one on December 9, 2022 where [REDACTED] was inappropriately restrained by staff, despite the use of physical restraint not being contemplated within his IEP. [REDACTED] reported injuries due to the use of physical restraint, but [REDACTED] failed to address these concerns.*
  - There is no testimony from a knowledgeable witness or other evidence to show that on December 9, 2022 or on any other date that [REDACTED] was inappropriately restrained by Respondent’s staff members or that he was injured as a result.
- *Petitioner raised these concerns during IEP meetings with [REDACTED] throughout the 2021-22 school year. Petitioner raised these concerns again during a meeting with Margaret Glenn,*

*Kirby Ratner, Hannah Kessler, Traci Whitaker, Ashley Hunter, and Amanda Castillo on May 19, 2022.*

- There is evidence that Petitioner raised a number of concerns throughout the 2021-22 school year. Petitioner called none of these individuals as witnesses and failed to adduce admissible evidence the issues that gave rise to her concerns caused a failure to implement ██████'s BIPs or IEPs so as to deny him FAPE.
- *The failure to conduct a complete FBA and then the failure to implement the accommodations listed in his BIP led to frequent behaviors which staff responded to by removing ██████ from the classroom and to the use of physical restraint, causing ██████ to lose substantial instructional time, denying him access to the curriculum, and resulting in a denial of FAPE during the 2021-22 school year.*
  - As noted above, there is no testimony from a knowledgeable witness or other evidence to show that there was a failure to implement the accommodations in his BIP (which was not introduced into evidence) that led to anything that denied him instructional time or denied him FAPE during the 2021-22 school year.

*Amended Complaint, p. 2.*

Regarding the 2022-23 school year, Petitioner alleged that,

- *Just months into the 2022-23 school year the flaws in the BIP carried over from ██████ became apparent in the frequent behaviors causing ██████ to miss instructional time and impacting his ability to make academic progress.*
  - There is no testimony from a knowledgeable witness or other evidence to show that there were flaws in the BIP from ██████ that any such purported flaws carried over, or that as a result he missed instructional time impacting his ability to make academic progress.
- *Admin at ██████ even made “an urgent request” for an IEP meeting. During that IEP meeting, which was held on October 28, 2022, the Kindergarten resource raised concerns that the existing BIP did not accurately reflect the function of ██████'s behavior and it was determined that a new FBA should be conducted.*

- Whether the information concerning the information concerning an “urgent request” for an IEP is reflected in an IEP or some other documentation, neither the IEP, nor the other documentation was tendered as such. Additionally, there was no testimony from a knowledgeable witness or other evidence to show that there was a concern that the existing BIP did not accurately reflect the function of ██████’s behavior, or that the decision that a new FBA should be conducted was based on that flaw in the BIP.
- *It was also determined that academic goals be incorporated into ██████’s IEP because the loss of instructional time due to frequent behaviors could impede academic progress. ██████ was also removed from the general education classroom at that time.*
  - ██████’s IEPs were not tendered for admission or admitted into evidence, and there was no testimony from a knowledgeable witness or other evidence to show that instructional goals were incorporated into ██████’s IEP because the loss of instructional time due to frequent behaviors could impede academic progress.
- *The October 28, 2022 IEP inadequately identified short-term objectives to enable ██████ to reach annual goals. Further, Annual Goal 2, which stated “When placed in a school setting, Kenan will use age-appropriate coping skills an average of 80% of opportunities or more,” focused solely on decreases in disruptive behaviors and lacked sufficient detail about positive/desired behaviors to allow progress towards the goal to be accurately measured.*
  - ██████’s IEPs were not tendered for admission or admitted into evidence, and there was no testimony from a knowledgeable witness or other evidence to show that the short-term objectives to reach annual goals were inadequately identified. Additionally, there was no testimony from a knowledgeable witness or other evidence to show that Annual Goal 2 lacked sufficient detail about positive/desired behaviors to allow progress towards the goal to be accurately measured.
- *Finally, the IEP also completely failed to discuss why accommodations could not be implemented to allow ██████ to remain in the least restrictive environment or to establish*



*criteria for determining if and when [REDACTED] would be able to return to the general education classroom.*

- [REDACTED]s IEPs were not tendered for admission or admitted into evidence, and there was no testimony from a knowledgeable witness or other evidence to show that any IEP completely failed to discuss why accommodations could not be implemented to allow [REDACTED] to remain in the least restrictive environment or to establish criteria for determining if and when [REDACTED] would be able to return to the general education classroom.
- [REDACTED] *failed to complete the FBA until February 7, 2023, resulting in [REDACTED] being denied adequate behavioral support tailored to his individual needs for three months, during which he continued to receive inadequate behavioral supports. This resulted in frequent behaviors cutting into his instructional time.*
  - [REDACTED]s FBA was not tendered for admission or admitted into evidence, and there was no testimony from a knowledgeable witness or other evidence to show that the completion time of the FBA was in any way unreasonable or that the failure to complete the FBA was reason [REDACTED] was denied adequate behavioral supports. Additionally, there was no testimony from a knowledgeable witness or other evidence to show that he received inadequate behavioral supports that cut into his instruction time.
- *The next IEP meeting was held May 23, 2023. The resulting plan continued to call for [REDACTED] to be isolated from the general education classroom and failed to indicate why accommodations could not be implemented that would allow [REDACTED] to be educated in the least restrictive environment.*
  - [REDACTED]s IEPs were not tendered for admission or admitted into evidence, and there was no testimony from a knowledgeable witness or other evidence to show that the resulting plan set forth in an IEP continued to call for [REDACTED] to be isolated from the general education classroom and failed to indicate why accommodations could not

be implemented that would allow [REDACTED] to be educated in the least restrictive environment.

- *The Amended IEP instituted on May 23, 2023 also inadequately identified short-term objectives. Further, staff at [REDACTED] failed to consistently implement the accommodations that were listed in his IEP and BIP.*
  - [REDACTED]s IEPs were not tendered for admission or admitted into evidence, and there was no testimony from a knowledgeable witness or other evidence to show that any IEP inadequately identified short-term objectives, or that staff at [REDACTED] failed to consistently implement the accommodations that were listed in his IEP and BIP (neither of which were tendered or admitted).
- *In addition, [REDACTED] was also subjected to physical restraint, including but not limited to an incident on May 29, 2023, and reported injuries as a result. Physical restraint was not indicated by his IEP or BIP and the school failed to appropriately respond to these incidents or to amend the IEP and BIP to prevent future misuse of physical restraint.*
  - There was no testimony from a knowledgeable witness or other evidence to show that [REDACTED] was also subjected to physical restraint, including but not limited to an incident on May 29, 2023, and reported injuries as a result. There was no testimony from a knowledgeable witness or other evidence to show that the school failed to appropriately respond to these incidents or to amend the IEP and BIP to prevent future misuse of physical restraint.
- *As a result of these violations of [REDACTED]s rights, [REDACTED] was denied FAPE for the entirety of the 2022-2023 school year.*
  - As noted above, there is no testimony from a knowledgeable witness or other evidence to show that [REDACTED]s rights were violated or that [REDACTED] was denied FAPE for the entirety of the 2022-2023 school year.

#### IV. DECISION

The purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living . . . .” C.P. v. Leon County Sch. Bd., 483 F.3d 1151 (11<sup>th</sup> Cir. 2007), quoting 20 U.S.C. § 1400(d)(1)(A). At the IDEA’s core “is the cooperative process that it establishes between parents and schools . . . .” Schaffer, 546 U.S. at 53. Violation of any of the procedures of the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 et seq., is not a *per se* violation of the Act, nor is every disagreement between the parties an actionable claim. See K.A., 741 F.3d at 1199. It is understandable that a parent’s highest priority is to secure a free and appropriate education for her child. As Schaffer teaches, a cooperative relationship between a parent and a school district generally will facilitate this goal. Despite the challenges described in Petitioners’ testimony and in the documents tendered for admission, the evidence failed to show that the IEPs in place were not reasonably calculated to provide FAPE. Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 394 (2017). Moreover, the evidence failed to show that [REDACTED] was denied FAPE. Additionally, the incidents described in Petitioner’s testimony and in the documents in evidence reveal little more than the challenges children encounter in the playschool playground. Specifically, there has been no showing that [REDACTED] has experienced harassment so “severe, pervasive and objectively offensive” that it would deny [REDACTED] FAPE. See Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 633 (1999).

The Petitioners bear the burden of proof in this matter. Schaffer, 546 U.S. at 49; Ga. Comp. R. & Regs 160-4-7-.12(3)(l) and 616-1-2-.07(1). Accordingly, it is not the District’s burden to

prove that it has acted in accordance with the IDEA; it is the Petitioners' burden to prove the claimed violations.

The Petitioners failed to offer any probative evidence that the District violated the IDEA. Accordingly, the District's Motion for Involuntary Dismissal is **GRANTED** and this matter is **DISMISSED**.

**SO ORDERED**, this 7th day of February, 2024.

  
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**John Fry**  
**Administrative Law Judge**

